

ENTERED

December 19, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BILLY DETROY MITCHELL,
TDCJ # 01625770,

Plaintiff,

VS.

BRYAN COLLIER, *et al*,

Defendants.

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CIVIL ACTION NO. 3:18-CV-372

ORDER

Plaintiff Billy Detroy Mitchell is currently incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division (“TDCJ”). He filed a civil rights complaint under 42 U.S.C. § 1983 (Dkt. 1). On November 13, 2018, the Court granted him leave to proceed *in forma pauperis* and assessed an initial filing fee of \$7.00 (Dkt. 5). Plaintiff now has filed a letter requesting dismissal of his case and stating, “I do not wish to prosecute this civil action any further” (Dkt. 6).

Mitchell has clearly communicated his desire not to pursue his case. Federal Rule of Civil Procedure 41(a) permits dismissal of an action at the plaintiff’s request. A motion under Rule 41(a) for voluntary dismissal “should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *Test Masters Educ. Servs., Inc. v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 448 (5th Cir. 2015) (internal citation and quotation marks omitted). In this case, Defendants have not been served with process and will not be prejudiced.

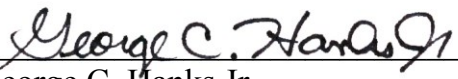
The Court therefore **ORDERS** as follows:

1. This civil action is **DISMISSED** without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

2. The fee collection order entered in this case (Dkt. 5) is **VACATED**. Inmate Trust Fund officials shall make no further withdrawals from the prison trust fund account of the plaintiff, Billy Detroy Mitchell (TDCJ # 01625770), to collect filing fees for Civil Action No. 3:18-0372. The plaintiff is advised, however, that funds properly withdrawn under the collection order to date will not be refunded.

The Clerk will provide a copy of this order to (1) the plaintiff and (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793.

SIGNED at Galveston, Texas, this 19th day of December, 2018.



George C. Hanks Jr.
United States District Judge